

Initial Statement of Reasons
Public Notification Requirements for Drinking Water Regulation Violations
Title 22, California Code of Regulations

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (Sections 116270-116751, Health and Safety Code [H&S Code]). California has been granted “primacy” for the enforcement of the federal act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances to determine compliance with drinking water standards, also known as maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. Secondary MCLs are based on consumer acceptance, using parameters such as odor, taste, and appearance as measures of acceptability. The water supplier must notify the Department and the public when a primary or secondary MCL has been violated and take appropriate action. Public water systems must also sample for a number of “unregulated” chemicals, as set forth in regulation. When MCLs are not the most feasible or appropriate approach to minimizing the level of a contaminant in drinking water, regulations are adopted that use “treatment techniques” to control the levels of the contaminant instead. Public water systems that do not comply with “treatment technique” requirements must also notify the public. The proposed regulations are revisions to the public notification requirements in the existing regulations that govern the form, manner, frequency, and content of public notices.

On May 4, 2000, USEPA promulgated revisions to the public notification requirements [Federal Register 65(87), 25982-26049] that California must adopt to maintain primacy. This proposed regulation package incorporates all the required revisions.

In order to adopt the revisions to the public notification requirements in conformance with the federal rule, the Department proposes the following changes to Title 22, chapters 15 and 17:

- Adopt new sections 64401.71, 64401.72 and 64401.73 to establish definitions for the three tiers of public notices for clarification;
- Amend sections 64426.1, 64432.1, 64451, 64453, 64482, 64483, and 64666 in order to revise citations;
- Amend section 64451 to update nomenclature and require water systems to certify to the Department when specified public notices have been issued. Section 64451 would also be redesignated as new section 64469;
- Amend section 64453 to specify the retention period for copies of public notices. Section 64453 would also be redesignated as new section 64470;
- Renumber article 18 (Records and Reporting) and article 19 (Notification of the Department and Water Consumers) in chapter 15 to be articles 19 and 18 respectively to change the order;

- Repeal sections 64463.2, 64464.1, 64464.3, 64464.6, 64465, 64466, 64467, 64467.5, 64468.1, 64468.2, 64468.3, 64468.4, 64468.5, 64469, and 64470;
- Adopt new sections 64463 through 64466 to incorporate the new federal requirements; and
- Amend section 64481 to include new federal definitions and remove appendices 64481-C, D, E, F, and G that would be relocated to the new public notification section 64465 in conformance with the federal revisions.

In addition, there would be two sections [64466 and 64481(b)(2)] that would incorporate federal regulations by reference.

The net effect of the proposed changes would be:

- Notices organized into three tiers for clarity;
- Public notices would contain the same health effects language that is to be included in Consumer Confidence Reports;
- Notices would be required under a broader definition of waterborne disease outbreaks and emergencies and for failure to collect a confirmation sample for nitrate;
- Water systems would be required to notify owners/operators of consecutive systems;
- Distribution of a violation notice may be limited to the affected portion of the distribution system, if approved by the Department;
- A certification for initial and repeat notices must be submitted to the Department within 10 days;
- Water systems would need to consult with the Department related to public notices for turbidity limit exceedances;
- Notice of acute violations would be required within 24 hours instead of the existing 72;
- Existing requirement for newspaper notice within 14 days would be changed to within 30 to 90 days, depending on the Department review;
- Repeat notice frequency may be extended to annual, if approved by the Department;
- Availability of unregulated chemical monitoring results required to be noticed;
- Water systems must provide new customers with copies of all notices for outstanding violations or situations;
- Additional details required in notice;
- Standard language for monitoring and testing procedure violations; and
- To inform non-English speaking consumers about notice import, a sentence in the appropriate language is to be included in the notice under the same circumstances as specified in the Consumer Confidence Report requirements.

Adoption of these requirements would satisfy the mandate in section 116350, H&S Code, and federal primacy requirements related to the adoption of regulations at least as stringent as the federal.

The following table provides the federal regulation citations for each proposed requirement and explains any differences between the state and federal regulations. All citations are for 40 CFR.

<i>State</i>	<i>Federal</i>	<i>Comment</i>
64426.1	141.202	
64432.1(a)(1)	141.23(f)(2)	
64463		
(a)	141.201(a), (c)(1)	
(b)		Differs from EPA in that State requires submittal for approval prior to distribution in order to ensure that the notice is correct and adequately communicates what it should to the consumer.
(c)	141.201(a), (c)(1)	
(d)	141.201(c)(2)	
(e)	141.206	
64463.1		
(a)(1-5)	141.201(a), 141.202(a)	
(a)(2)	141.23(f)(2), 141.202(a)	
(a)(4)	141.203(b)(3)	
(b)	141.75(b)(3)(ii), 141.202(b)(1)	
(b)(1)	141.202(b)(2)	
(b)(2)	141.202(b)(3)	
(c)	141.202(c)	
64463.4		
(a)	141.203(a)	
(b)	141.203(b)(1)	
64463.4(b)(2)	141.203(b)(2)	
64463.4(b)(3)	141.203(b)(3)	
64463.4(b)(3)	141.75(a)(5), 141.203(b)(3)	
64463.4(c)	141.203(c)	
64463.7		
(a)	141.204(a)	
(b)	141.204(b)	
(c)	141.204(c)	
(d)	141.204(d)	
64465		
(a)	141.205(a)	
(a)(3)	141.205(d), (d)(1)	
(a)(10)	141.205(d)(3)	
(a)(11)	141.205(d)(2)	
(b)	141.205(b)	
(c)	141.205(c)(2)	
(d)	141.205(c)	
Appendices 64465-A thru H	141.205(c)(2)	
Appendix 64465-D	141.208(c)	
64466	141.207	

64469 (a) & (b)	n/a	
(d)	141.31(d), 141.201(c)(3)	
64470(b)(5)	141.33(e)	
64481	141.153(c)(3) 141.153(d)(1), (4), (6) 141.153(f)(4)	
64482(d)	141.154(e)	
64483(g)	141.155(h)	
no state citation	141.208(a)	Special notice for >2 mg/L fluoride secondary MCL; N/A since Ca. has a primary MCL of 2 mg/L with associated required language.
no state citation	141.209(a), (b)	Notice and posting for allowed exceedance of nitrate MCL; N/A since Ca. does not allow such an exceedance
no state citation	141.210	Primacy agency can give notice for water system; N/A since Ca. requires system to give notice in all cases